

In the Matter of License No. 205254
Issued to: JEFF C. JENNETTE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1191

JEFF C. JENNETTE

This appeal has been taken under Title 46 United States Code 239(g) (1958) and Title 46 Code of Federal Regulations 137.11-1 (1953).

By ordered dated 29 December 1958, an Examiner of the United States Coast Guard at New York, suspended licenses and any other documents issued to the Appellant by the United States Coast Guard upon finding the Appellant guilty of the single specification and charge of negligence, to wit: Appellant while serving as Master of the ferry DONGAN HILLS, under authority of his duly issued license, on 8 February 1958, did negligently fail to keep clear of the tanker TYNEFIELD, the privileged vessel in a crossing situation, thereby contributing to a collision between the DONGAN HILLS and the TYNEFIELD in the Upper Bay of New York Harbor.

At the hearing, Appellant was represented by counsel of his own selection, and pleaded to the single specification and charge "not guilty." Testimony and other evidence was introduced by both sides.

After final arguments by the Investigating Officer and Appellant's counsel, the Examiner made his findings and entered an order suspending License No. 205254 for a period of two months. Appellant surrendered his license and was issued a temporary certificate.

This is an appeal from the order of the Examiner. It is urged that the findings of fact are not true and correct, and that the specification and charge were not proved since they are contrary to the weight of evidence. More specifically, the appeal urges that there was no personal negligence of the Appellant, and that any negligence of the officers or crew of the ferry DONGAN HILLS cannot be imputed to the Appellant.

In Addition, a supplementary brief was submitted by Mr. Downing and, on 12 January 1960, oral argument was made by Mr. Downing before the Coast Guard Headquarters's Appeal Board.

APPEARANCES: Messrs. Satterlee, Browne, Cherbonnier & Dickerson, Proctors for Appellant, by Edward R. Downing, Esq.

FINDINGS OF FACT

At 7:40 P.M., 8 February 1958, the ferry DONGAN HILLS, with Jeff C. Jennette as Master, departed the New York Ferry Terminal at Whitehall Street for Stapleton, Staten Island. Captain Jenette holds a federal license as Master of Ferry steam and Motor Vessels any gross tons upon Bays, Sounds and Rivers, and as First-Class Pilot in New York Harbor waters. The Appellants, Captain Jennette, was on watch in the ferry's pilothouse at all times material. In addition to Captain Jennette, Mr. William Evans was in the ferry's pilothouse. Mr. Evans holds federal licenses as Inland Mate and as First-Class Pilot any gross tons in New York Harbor. Mr. Evans, who had ben designated as "Assistant Captain" by the owners of the ferry, was at all times material, subject to the orders of Captain Jennette.

The ferry DONGAN HILLS was proceeding down the Upper New York Bay, from the Battery toward St. George, at its full speed of eleven to fourteen knots. Mr. Evans was at the helm; Appellant, Captain Jennette, was sitting on a settee in the pilothouse. Shortly after Mr. Evans took the wheel, off Castle Williams, the ferry encountered a car float; Appellant stood up from the settee, observed the situation, and sat down again. Appellant remained seated until the ferry was abeam of Gas Buoy No. 27 at which time he got up and walked forward to the left of Mr. Evans, who was standing and steering. At that moment the attention of the Appellant was directed by Mr. Evans to the British tanker TYNEFIELD: Mr. Evans saying, "Captain, do you see what I see?" At this time the red light of the tanker was bearing twenty degrees off the starboard bow of the ferry. A crossing situation existed (at no time was the green light of the tanker visible to the ferry). When Appellant's attention was called to the tanker, it was the first time he knew of its presence. The tanker was then approximately 650 feet off the starboard bow of the ferry and the ferry was proceeding ahead at full speed. Mr. Evans ordered the engines of the ferry full astern. The ferry struck the tanker's port side approximately one hundred feet from her bow, at the No. 1 tank. The collision was at approximately right angles. The ferry went into the side of the tanker and then backed out of her. The collision between the ferry and the tanker, as stipulated, took place at 8:00 P.M. on 8 February 1958, approximately 650 feet south of Gas Buoy No. 27.

The two lookouts aboard the ferry had not reported the presence of the tanker to the ferry's pilothouse, and these same lookouts had abandoned their lookout stations prior to the collision.

After the collision, Appellant took over the wheel of the ferry and brought her into Staten Island Terminal.

Appellant has no prior record.

The above findings of fact are substantially in agreement with those of the Examiner and are supported by the record.

OPINION

In the instant case there are two questions (1) Was Captain Jennette personally negligent on the night of the collision? (2) Can the negligence of the crew members be imputed to the Appellant, Captain Jennette?

In its broadest sense "negligence" is the failure to perform duty recognized by law. There can be negligence by malfeasance, misfeasance, or nonfeasance: respectively, doing the wrong thing, doing the right thing in a careless manner, and not doing anything when something is required to be done.

I agree with the Coast Guard Headquarters' Appeal Board that the actions of the tanker TYNEFIELD (the privileged vessel in this crossing situation) prior to the collision with the ferry DONGAN HILLS have no significant bearing on determining whether or not the Appellant was negligent in the performance of his duties as Master of the DONGAN HILLS. As Master, the Appellant had a duty to protect the lives and property entrusted to him by exercising a reasonable degree of skill and judgement, such as might fairly be expected of a man of his calling under circumstances then prevailing. As was stated in the Llanover, 78 L1. L. 461 (1945), Griffin on Collision, Sec. 204 (1949), "... We are not to expect extraordinary skill or extraordinary diligence. On the other hand it is negligence not to take all reasonable steps to avoid danger in navigation, and the nature of those steps must of course depend on the surrounding circumstances, and they may call for the utmost possible precautions."

What were the circumstances prior to the collision? The ferry was proceeding at full speed at night in New York Harbor. The Appellant admitted under oath that oftentimes the lookouts were not at their stations as required (R. 160). It is well-settled that where the danger is great, the precautions taken should be correspondingly greater. The Clarita, 93 U.S. 1 (1874). The night of the collision the Appellant did not attempt to make certain that the lookouts were at their assigned posts; nor did the Appellant himself keep an alert lookout for his vessel. This was negligence.

Neither the Master nor the helmsman can be considered a lookout within the requirements of maritime law. The Big Chief, 75 F. Supp. 496 (1948). But regardless of the inability of the Appellant to be the legally-required, fulltime lookout, it is common maritime knowledge that the officer having responsibility for the movements of a vessel should be his own best lookout in fact: great responsibility induces great vigilance. The failure to determine if the lookout were at their stations was nonfeasance; the failure to personally maintain alertness in the directions from which other vessels could reasonably endanger the DONGAN HILLS was misfeasance--both were negligence, both contributed to the collision. It is no defense that Appellant may have done everything he could have done after the eventual discovery of the TYNEFIELD--then it was too late. The America, 92 U.S. 432 (1876).

The Appellant attempted to establish a Master-Pilot relationship between himself and Mr. Evans who was the helmsman at the time of the collision. To this end the "Brief in Support of Appeal" cites Griffin on Collision, 1949 ed., Section 190. A reading of the first section in Griffin under the chapter heading of "Pilotage" convinces me that the Master-Pilot relationship described throughout the remainder of that chapter is not the relationship that existed in the instant case:

Sec. 186. Voluntary Pilotage. The term "pilot" is used in two senses--(1) especially

in inland navigation, to denote an officer "serving on board a ship during the course of a voyage, and having the charge of the helm, and of the ship's route"; and (2) to designate "a person taken on board at a particular place for the purpose of conducting a ship through a river, road, or channel, or from or into a port" (citations). In this chapter, the word is used in the second of these senses,--to describe a temporary additional navigator, employed to navigate, or assist in navigating, a vessel in particular waters of which he has a special local knowledge....Griffin on Collision, 1949 ed. [Emphasis mine].

The author expressly recognized two types of pilots and limited the rest of his chapter to the type (2) pilot. Mr. Evans is obviously a type (1) pilot.

There is additional evidence to support the Examiner's finding that "At all of the material times, the person charged was in command of the ferry DONGAN HILLS, and in charge of her navigation." Appellant admitted that he was in command (R. 154), Appellant admitted that the reason he did nothing to avoid the earlier passing carfloat was because he saw no immediate danger (R.155). Mr. Parker, Supervising Captain for the City of New York, testified that when the pilot is at the wheel the pilot is subject to the orders of the Master (R.181). Captain McGuire, Director of Ferry Operations for the City of New York, testified that both the first-class pilot and the Master are required to be up in the pilothouse (R.208), and that they are both on watch all the time they are on board the ferry during their (8-hour) tour of duty (R.208).

Much has been said about the euphemism "Assistant Captain" given to Mr. Evans to further attempt to show he was a pilot and not merely a deck officer with the additional qualification of first-class pilot. I am not persuaded by the title. A reading of the record will show that Mr. Evans holds only the licenses for Inland Mate and First-class pilot: Mr. Evans has never held a license as a Master (R.73, 94). Mr. Evans also explains his position as Assistant Captain at R. 93, ",.... We're called Assistant Captains, which means that I have to wash windows and mop floors, and if a light goes out I have to go out and see that the light is lit." Such tasks are incompatible with the Master-Pilot relationship the Appellant alleges to have existed. There is substantial evidence to hold that Mr. Evans was a permanent deck officer, a member of the ferry's complement at the time of the accident, and at all time material under the control and direction of the Appellant.

Because of the above, it is not necessary to discuss whether the acts of the crew could be imputed to the Master.

ORDER

The order of the Examiner dated at New York, New York, on 29 December 1958, for two months' outright suspension is hereby AFFIRMED.

A.C. Richmond
Admiral, United States Coast Guard

Commandant

Dated at Washington, D.C., this 30th day of August, 1960.